

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA

v.

Case Nos. 2019MM002346AXXXNB
2019MM002348AXXXNB

ROBERT KRAFT,

Defendant.

AMENDED MOTION FOR PROTECTIVE ORDER

On March 21, 2019, Defendant Robert Kraft ("Mr. Kraft"), together with various other related defendants, filed a Joint Motion for Protective Order ("Motion") that would preclude any party from copying or permitting, facilitating, making, or granting any public access to the evidence gathered during the investigation at issue, including any video-evidence related thereto ("Materials"), pending further order of the Court. That Motion is currently pending before the Court. In addition to the reasons already stated in the Motion, Mr. Kraft provides additional bases for the entry of the requested Protective Order:

1. Rule 3.220(1) of the Florida Rules of Criminal Procedure authorizes this Court to enter a Protective Order limiting or restricting disclosure of, among other things, state, county, and municipal records. Specifically, the rule provides that "[o]n a showing of good cause, the court shall at any time order that specified disclosures be restricted, deferred or exempted from discovery[.]" *Id.* In addition, Rule 3.220(1) also allows the court to restrict disclosure to protect a witness from "harassment, unnecessary inconvenience or *invasion of privacy*." *Id.* (emphasis added).

2. As demonstrated in Mr. Kraft's Motion To Suppress filed on March 28, 2019, the Materials, including the video evidence, were seized in violation of Florida law, as well as Mr. Kraft's privacy rights under the constitutions of Florida and the United States, including his right to be free from unreasonable search and seizure. As a result, Mr. Kraft filed his Motion seeking to suppress the Materials, which are the fruits of an unlawful investigation, including illegal traffic stops and an unconstitutional sneak-and-peek search warrant that the Town of Jupiter Police Department used to spy on Mr. Kraft and others, while they were in the private rooms of a licensed spa receiving treatment from licensed masseuses. In light of Mr. Kraft's pending Motion that challenges the legality of the search and that seeks to suppress the illegally obtained evidence, the Court should grant the Motion to prevent the widespread dissemination and publication of the video evidence that was illegally seized in violation of Mr. Kraft's constitutionally protected privacy rights. *See Post-Newsweek Stations, Fla. Inc. v. Doe*, 612 So. 2d 549, 551 (Fla. 1992) (recognizing that privacy rights can trump the public's statutory right of access to pretrial

discovery). Surely, the press, which seeks to intervene in this action for the sole purpose of obtaining access to the illegally obtained video evidence, has no legitimate right to possess such material.

3. Additionally, a Protective Order is further necessary to further protect Mr. Kraft's Sixth Amendment right to a fair trial, which the United States Supreme Court has characterized as "the most fundamental of all freedoms," which "must be maintained at all costs." *Estes v. State of Tex.*, 381 U.S. 532, 540 (1965). Thus, "[t]o safeguard the due process rights of the accused, a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity." *Gannett Co. v. DePasquale*, 443 U.S. 368, 378 (1979); see *Palm Beach Newspapers, Inc. v. Burk*, 504 So.2d 378, 380 (Fla. 1987) ("where a defendant's right to a fair trial conflicts with the public's right of access, it is the right of access which must yield"); see also *Bundy v. State*, 455 So.2d 330, 338 (Fla. 1984) (a balancing test between the right of public access and a defendant's right to a fair trial must be applied so as to recognize the weightier considerations of the defendant). As a result, this Court should enter the proposed Protective Order to satisfy its "affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity" and to ensure that Mr. Kraft receives a fair trial.

Respectfully Submitted,

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By: /s/ Jack Goldberger

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Clerk of Court using the Florida Courts E-Filing Portal and served via E-Service upon Assistant State Attorneys Elizabeth Neto and Judy Arco, on this day, **March 28, 2019**.

By: /s/ Jack Goldberger
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